

CLAUSE I-87 – ORGANIZATIONAL CONFLICTS OF INTEREST - SPECIAL CLAUSE (August 2002)

- (a) Purpose. The primary purpose of this clause is to aid in ensuring that the Subcontractor (1) is not biased because of its past, present, or currently planned interests (financial, subcontractual, organizational, or otherwise) which relate to the work under this subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a prime subcontractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.
  - (i) The Subcontractor shall be ineligible to participate in any capacity in Department subcontracts, subcontracts, or proposals therefore (solicited or unsolicited) which stem directly from the Subcontractor's performance of work under this subcontract. Furthermore, unless so directed in writing by the Subcontracting Officer, the Subcontractor shall not perform any technical consulting or management support services work under this subcontract on any of its products or services or the products or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on subcontracts for technical consulting and management support services.
  - (ii) If the Subcontractor under this subcontract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any subcontractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Subcontracting Officer, in which case the restriction in this subparagraph shall not apply.
  - (iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard commercial items to SURA.
- (1) Access to and use of information.
  - (i) If the Subcontractor, in the performance of this subcontract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the Subcontracting Officer it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the Department or SURA based on such information for a period of six (6) months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to SURA which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the Department.
  - (ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.
  - (iii) The Subcontractor shall have, subject to patent, data, and security provisions of this subcontract, the right to use technical data it first produced after the requirements of the instant subcontract have been met.
- (c) Disclosure after award.
  - (1) The Subcontractor agrees that if after award it discovers an organizational conflict of interest with respect to this subcontract, an immediate and full disclosure shall be made in writing to the Subcontracting Officer that shall include a description of the action, which the Subcontractor has taken or proposes to take to avoid or mitigate such conflicts.

SURA may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of SURA.
  - (2) In the event that the Subcontractor was aware of an organizational conflict of interest prior to the award of this subcontract and did not disclose the conflict to the Subcontracting Officer, SURA may terminate the subcontract for default.

(d) Lower-tier subcontracts.

- (1) The Subcontractor shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "subcontract", "Subcontractor" and "Subcontracting Officer" shall be appropriately modified to preserve SURA and the Government's rights.
  - (2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting or management support services work as defined at 909.570, the Subcontractor shall obtain for the Department and SURA a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The Subcontractor shall not enter into any lower-tier subcontract nor engage any consultant unless the Subcontracting Officer shall have first notified the Subcontractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of SURA.
- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this subcontract, SURA may terminate the subcontract for default, disqualify the Subcontractor for subsequent related subcontractual efforts and pursue such other remedies as may be permitted by law or this subcontract.
- (f) Waiver. Requests for waiver under this clause shall be directed in writing to the Subcontracting Officer and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of SURA, the Subcontracting Officer shall grant such a waiver in writing.
- (g) Modifications. Prior to a subcontract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the subcontract are changed, SURA will request and the Subcontractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.